

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 STEVEN K YOUNG, et al.,

11 Plaintiffs,

12 v.

13 NORTHWEST TRUSTEE SERVICES
14 INC., et al.,

15 Defendants.

CASE NO. C14-1807 MJP

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

16 THIS MATTER comes before the Court on Defendants Green Tree Servicing LLC and
17 Federal National Mortgage Association's ("Defendants") motion to dismiss Plaintiffs' claims
18 under Fed. R. Civ. P. 12(b)(6). (Dkt. No. 7.) Having reviewed the Parties' briefing and all related
19 papers, the Court GRANTS Defendants' motion and DISMISSES Plaintiffs' claims with
20 prejudice.

21 **Background**

22 Plaintiffs filed this suit on November 28, 2014, alleging violations of several statutes in
23 connection with Defendants' scheduled non-judicial foreclosure on their property. (Dkt. No. 1.)
24

1 Plaintiffs allege violation of 12 C.F.R. § 226.39, part of the Truth in Lending Act (“TILA”),
 2 breach of contract in connection with 15 U.S.C. § 1635, violation of the Racketeering Influenced
 3 and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962, civil conspiracy, and assert claims
 4 for declaratory relief and to quiet title. Plaintiffs’ main contention is that Defendants do not have
 5 adequate proof of ownership of the debt and, therefore, cannot foreclose on the property. (See
 6 Dkt. No. 1 at 8–9.) Defendants now move to dismiss, arguing that Plaintiffs have failed to state a
 7 claim upon which relief can be granted. (Dkt. No. 7.)

8 Discussion

9 **I. Legal Standard**

10 **A. Dismissal Pursuant to Fed. R. Civ. P. 12(b)(6)**

11 Under Fed. R. Civ. P. 12(b)(6), the Court may dismiss a complaint for “failure to state a
 12 claim upon which relief can be granted.” In ruling on a motion to dismiss, the Court must
 13 construe the complaint in the light most favorable to the non-moving party. Livid Holdings Ltd.
 14 v. Salomon Smith Barney, Inc., 416 F.3d 940, 946 (9th Cir. 2005). The Court must accept all
 15 well-pleaded allegations of material fact as true and draw all reasonable inferences in favor of
 16 the plaintiff. Wyler Summit P’ship v. Turner Broad. Sys., 135 F.3d 658, 661 (9th Cir. 1998).

17 Dismissal is appropriate where a complaint fails to allege “enough facts to state a claim
 18 to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A
 19 claim is plausible on its face “when the plaintiff pleads factual content that allows the court to
 20 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft
 21 v. Iqbal, 556 U.S. 662, 678 (2009). As a result, a complaint must contain “more than labels and
 22 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
 23 Twombly, 550 U.S. at 555.

II. Defendants' Motion to Dismiss

Defendants move to dismiss Plaintiffs' complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. (Dkt. No. 7.)

A. Quiet Title

Plaintiffs' first cause of action seeks to quiet title to their property and seeks a declaration that "the title to the Subject Property is vested solely in Plaintiff and that Defendants have no right, title, estate, lien, or interest in the Property and that Defendants and each of them be forever enjoined from asserting any right, title, lien or interest in the Property adverse to Plaintiff." (Dkt. No. 1 at 16.) Plaintiffs argue Defendants must cease foreclosure proceedings on the property because "none of the Defendants are the holder of the [promissory] Note, and none of them can prove that the Note is secured by the Deed of Trust. . . ." (*Id.*) Defendants argue Plaintiffs' claim to quiet title is both legally deficient and inadequately pleaded: Defendants are not, and could not be, asserting an ownership interest in or a right to possession of the property because the deed of trust created only a lien, and Plaintiffs fail to plead that Defendants are otherwise asserting a current right to ownership or possession of the property. (Dkt. No. 7 at 4.)

A plaintiff may bring a quiet title action "against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title." RCW 7.28.010. "[T]he plaintiff in an action to quiet title must prevail, if he prevails at all, on the strength of his own title, and not on the weakness of the title of his adversary." City of Centralia v. Miller, 31 Wn.2d 417, 422 (1948). A deed of trust creates a lien on real property, but it does not convey title to the lender. RCW 61.24.020; Rustad Heating & Plumbing Co. v. Waldt, 91 Wn.2d 372, 376 (1979) (holding that a deed of trust is a species of mortgage, creating a lien on real property).

1 Plaintiffs fail to state a claim to quiet title. While Plaintiffs allege that Defendants lack a
 2 right to possess the property, they do not allege that Defendants are claiming a current right of
 3 ownership or possession of the property. (See Dkt. No. 1 at 13.) Because the deed of trust only
 4 creates a lien without conveying ownership rights to Defendants, and because Plaintiffs do not
 5 separately allege that Defendants have asserted a title interest in the property, a claim to quiet
 6 title cannot be maintained. See, e.g., Evans v. BAC Home Loans Servicing LP, No. 10-0656,
 7 2010 WL 5138394, at *4 (W.D. Wash. Dec. 10, 2010) (dismissing a claim to quiet title when
 8 Plaintiffs did not allege that Defendant asserted a title interest in the disputed property).
 9 Plaintiffs' first cause of action fails to state a claim upon which relief can be granted, and is
 10 therefore DISMISSED.

11 **B. Wrongful Foreclosure under Truth in Lending Act**

12 Plaintiffs' second cause of action alleges Defendants wrongfully foreclosed on Plaintiffs'
 13 property by violating certain TILA requirements codified at 12 C.F.R. § 226.39. (Dkt. No. 1 at
 14 16.) Plaintiffs allege "the Defendant GREENTREE is not a real and beneficial party of interest,
 15 nor the Holder of the Note, . . . [and that] Green Tree Servicing LLC has offered no evidence that
 16 loan [sic] was ever purchased from Countrywide Bank, FSB." (Id. at 9, 15.) As a result, Plaintiffs
 17 claim that "Defendants do not have the right to foreclose on the Property because the Defendants
 18 do not own the Note of [sic] have any legal relationship to the Note." (Id. at 18.) Defendants
 19 argue that 12 C.F.R. § 226.39 contains no private cause of action and cannot support a wrongful
 20 foreclosure claim. (Dkt. No. 7 at 5.)

21 12 C.F.R. § 226.39 consists of notification requirements for a creditor who takes title to
 22 an existing mortgage loan. Failure to comply with these requirements gives rise to a private
 23 cause of action against the creditor. See 15 U.S.C. § 1640; Logan v. U.S. Bank Nat. Ass'n, 722
 24

1 F.3d 1163, 1172 (9th Cir. 2013) (explaining that any person may “sue a creditor who fails to
2 comply with the newly enacted notice requirement or other requirements under the Act for
3 damages.”). To state a claim under TILA, a plaintiff must allege actual damages resulting from
4 the creditor’s TILA violation. In re Smith, 289 F.3d 1155, 1157 (9th Cir. 2002); Fazio v.
5 Experian Info. Solutions, Inc., No. 12-00497, 2012 WL 2119253, at *6 (N.D. Cal. June 11,
6 2012).

7 Plaintiffs fail to state a plausible claim for relief under TILA. While Plaintiffs support
8 their TILA violation claim by alleging Green Tree Servicing cannot prove ownership of the
9 promissory note, they do not state any facts showing that actual damages resulted from a TILA
10 notice violation. Plaintiffs’ second cause of action fails to state a claim upon which relief can be
11 granted, and is therefore DISMISSED.

12 To the extent Plaintiffs’ second cause of action can be construed to allege that Defendants
13 violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692g, Plaintiffs’ claim
14 still fails. Plaintiffs argue that Defendants do not have the right to foreclose on the property
15 because “the debt has been and is now officially in dispute. By law, all collection activities must
16 cease until this matter is resolved.” (Dkt. No. 1 at 17.) While the FDCPA covers debt collection
17 activities, “a non-judicial foreclosure action does not constitute ‘debt collection’ under the
18 FDCPA.” Diessner v. Mortgage Elec. Registration Sys., 618 F. Supp. 2d 1184, 1188–89 (D.
19 Ariz. 2009), aff’d 384 F. App’x 609 (9th Cir. 2010). Because Defendants’ non-judicial
20 foreclosure of Plaintiffs’ property does not equate to debt collection under the FDCPA, to the
21 extent Plaintiffs’ cause of action can be construed as a FDCPA claim, Plaintiffs fail to state a
22 claim upon which relief can be granted.

C. TILA Right to Rescind/Breach of Contract

Plaintiffs’ third cause of action asserts a breach of contract claim against Defendants, but is styled as a TILA violation under the right-to-rescind provision, 15 U.S.C. § 1635. (Dkt. No. 1 at 19.) Plaintiffs allege that “after failure of the Defendants to validate true ownership [of the property], [Plaintiffs] executed their ‘Right-to-Cancel’ pursuant to Truth in Lending [Act].” (Id. at 6.) Defendants argue Plaintiffs fail to state a claim for rescission under TILA because any claim would be time-barred and Plaintiffs do not claim to be ready, willing, and able to return the funds loaned to them. (Dkt. No. 7 at 6.) Defendants further argue Plaintiffs fail to allege any facts supporting a breach of contract claim, including what contract was breached and by whom. (Id.)

TILA provides a right to rescind to borrowers who secure a loan with their primary residence, such as a borrower securing a home loan with a deed of trust and promissory note. 15 U.S.C. § 1635. The borrower’s right to rescind, however, expires three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first. 15 U.S.C. § 1635(f); Merritt v. Countrywide Fin. Corp., 759 F.3d 1023, 1030 (9th Cir. 2014).

Plaintiffs fail to state a claim for rescission under TILA. Although Plaintiffs state that they executed their right to rescind “after failure of the Defendants to validate true ownership,” (Dkt. No. 1 at 6), they do not state when, precisely, Defendants failed to validate true ownership or when they executed their right to rescind. Plaintiffs’ mortgage was recorded in 2008, (Id. at 10), more than three years before this action was instituted, and Plaintiffs do not argue that the statute of limitations should not apply. The Court finds that Plaintiffs’ right to rescind has expired because the transaction was consummated more than three years ago, and therefore their third cause of action fails to state a claim upon which relief can be granted and is DISMISSED.

1 To the extent Plaintiffs plead breach of contract under Washington common law, a breach
 2 of a contract is actionable where “the contract imposes a duty, the duty is breached, and the
 3 breach proximately causes damages to the claimant.” Northwest Mfrs. v. Dep’t of Labor, 78 Wn.
 4 App. 707, 713 (1995). Here, Plaintiffs fail to allege a specific contract that was breached, the
 5 duty that was breached, and the party who breached it. Plaintiffs therefore fail to state a claim for
 6 breach of contract.

7 **D. Racketeering Influenced and Corrupt Organizations Act**

8 Plaintiffs’ fourth cause of action alleges a RICO violation by Defendant Green Tree
 9 Servicing under 18 U.S.C. § 1962. (Dkt. No. 1 at 20.) Plaintiffs claim Defendant was the
 10 “principal or participated in the operation, management of this scheme itself and the pattern of
 11 racketeering include at least acts, transmission, the use of mail of fake assignments and mortgage
 12 and fictional corporate signatures [sic].” (Id.) Plaintiffs also claim Defendant manufactured
 13 default and used the “State Court and County Recorder’s office to foreclose on Plaintiff’s
 14 property.” (Id.) Defendants argue Plaintiffs fail to allege facts that support any of the RICO
 15 elements, and that the claim is time-barred. (Dkt. No. 7 at 7.)

16 To state a RICO claim, a plaintiff must allege “(1) conduct (2) of an enterprise (3)
 17 through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to
 18 plaintiff’s ‘business or property.’” Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431
 19 F.3d 353, 361 (9th Cir. 2005). Courts apply Fed. R. Civ. P. 9(b)’s particularity requirement to
 20 RICO claims. Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 541 (9th Cir. 1989). “Rule
 21 9(b) requires that the pleader state the time, place, and specific content of the false
 22 representations as well as the identities of the parties to the misrepresentation.” Id.

1 Plaintiffs fail to state a plausible RICO claim with particularity because they do not state
 2 the time, place, or specific content of the false representations allegedly made by Defendant
 3 Green Tree Servicing. Plaintiffs' fourth cause of action fails to state a claim upon which relief
 4 can be granted, and is therefore DISMISSED.

5 **E. Civil Conspiracy**

6 Plaintiffs' fifth cause of action alleges civil conspiracy against Defendants Northwest
 7 Trustee Services and Green Tree Servicing. (Dkt. No. 1 at 21.) Plaintiffs argue Northwest
 8 Trustee Services and Green Tree Servicing conspired to divest Plaintiffs of real property and "are
 9 employing a willful and intentional misuse of the foreclosure process." (*Id.*) Plaintiffs voluntarily
 10 dismissed Northwest Trustee Services from this lawsuit, which results in a civil conspiracy claim
 11 against one party: Green Tree Servicing. (*See* Dkt. No. 9.) Because a claim for civil conspiracy
 12 requires "a combination of two or more persons who contrive to commit a criminal or unlawful
 13 act," *Adams v. King Cnty.*, 164 Wn.2d 640, 660 (2008) (emphasis added), Plaintiffs' fifth cause
 14 of action fails to state a claim upon which relief can be granted, and is therefore DISMISSED.

15 **F. Declaratory Relief**

16 Plaintiffs' final cause of action seeks declaratory relief and requests the Court to
 17 determine "whether any Defendant has the legal right to foreclose based upon the Mortgage,"
 18 and the "rights and duties as to the validity of the Note and the Deed of Trust, and Defendants'
 19 rights to conduct a non-judicial foreclosure." (Dkt. No. 1 at 22.)

20 Declaratory judgment is a remedy, not a cause of action. *See, e.g., Bisson v. Bank of*
 21 *Am., N.A.*, 919 F. Supp. 2d 1130, 1139 (W.D. Wash. 2013). To obtain declaratory relief,
 22 Plaintiffs must first adequately state an underlying claim. *Id.*; *see also Massey v. BAC Home*
 23 *Loans Servicing LP*, 2013 U.S. Dist. LEXIS 147342, at *14 (W.D. Wash. Feb. 13, 2013).

1 Because Plaintiffs have failed to state any plausible claim, they are not entitled to declaratory
2 relief, and their sixth cause of action is DISMISSED.

3 **II. Plaintiffs' Additional Arguments**

4 In their January 23, 2015 Response, (Dkt. No. 10), Plaintiffs assert that they did not
5 receive service of the motion, mailed to them on December 22, 2014, (Dkt. No. 7 at 10), until
6 January 17, 2015, six days before the motion's noting date. They argue the motion should be re-
7 noted from January 23, 2015, to February 13, 2015, to allow them time to seek counsel regarding
8 a response to the motion. (Dkt. No 10 at 2–3.) Plaintiffs then filed an Amended Response—
9 without counsel—on February 2, 2015, (Dkt. No. 11), again requesting that the motion be re-
10 noted for February 13, 2015.

11 To the extent Plaintiffs' response can be interpreted as a request for additional time to
12 respond, Plaintiffs have now had over one month to prepare and file a response since the alleged
13 date of service, and have already filed one amended response. The Court declines to provide
14 Plaintiffs with additional time, or leave to file a third response, simply because Plaintiffs have
15 decided to seek counsel. The Court also notes that service appears proper because Defendants
16 mailed the motion on December 22, 2014 via first class mail. Fed. R. Civ. P. 5(b); Kim v.
17 Commandant, Def. Language Inst., Foreign Language Ctr., 772 F.2d 521, 524 (9th Cir. 1985)
18 (“Service by mail is complete upon mailing.”). The Court finds that Plaintiffs have had sufficient
19 opportunity to respond to the motion and, therefore, denies Plaintiffs' request for additional time
20 to respond.

21 Plaintiffs also argue in their amended response that Defendants have failed to comply
22 with Fed. R. Civ. P. 7.1, requiring them to file corporate disclosure statements. (Dkt. No. 11 at
23 4.) Because Defendants did not submit corporate disclosure statements prior to their motion,
24

1 Plaintiffs “move the Court to strike Defendant’s Motion and for Judgment on the allegations of
2 Plaintiff’s Complaint. . . .” (Id.)

3 Plaintiffs’ argument is without merit. Fed. R. Civ. P. 7.1 is intended to help judges be
4 properly informed of potential conflicts of interest that might justify disqualification. See
5 Advisory Committee Note, Fed. R. Civ. P. 7.1. Furthermore, corporate disclosures were filed on
6 March 2, 2015, and the Court finds that the delay in their filing has not prejudiced Plaintiffs in
7 this case.

8 The remainder of Plaintiffs’ response argues that Plaintiffs believe they will prevail if
9 allowed to conduct discovery. (Dkt. No. 11 at 5.) To survive dismissal, however, Plaintiffs’
10 complaint must plead factual content sufficient to state a claim for relief that is plausible on its
11 face; conclusory statements are insufficient.

12 Conclusion

13 Because Plaintiffs fail to state a plausible claim for relief, the Court GRANTS
14 Defendants’ motion to dismiss under Fed. R. Civ. P. 12(b)(6) and DISMISSES Plaintiffs’ claims
15 with prejudice.

16
17 The clerk is ordered to provide copies of this order to all counsel.

18 Dated this 11th day of March, 2015.

19
20
21 

22 Marsha J. Pechman
23 Chief United States District Judge
24